

PREMISES OF APPEARANCE AND FUNDAMENTAL FEATURES OF INTERNATIONAL ORGANIZATION

Oleg BONTEA¹

e-mail: obontea@mail.ru

Abstract

The appearance, then the advancement and differentiation of international organizations, was determined by three important factors:

- the need to prevent war and rules regulating its course;
- interdependencies that arise in the process of a nations' development;
- the combined effect of the new problems which are faced by the international society: population growth, poverty and food, environmental pollution control, the fight against terrorism, the use of outer space.

We should mention the following characteristic features of international organizations: they are in permanent cooperation with the states, based on their association; they are established in accordance with international law and based on international treaties; achieving cooperation in specific fields; the presence of an appropriate organizational structure; the presence of rights and obligations of the organization; the autonomy of international organization rights and obligations; privileges and benefits of international organizations and their staff.

Key words: international organizations, cooperation with states, international law, international treaty, rights and obligations of the organization

Although they appeared later than states, international organizations have grown rapidly both in number and in improving the structure, methods and means necessary for their activities, a process that has occurred under the pressure of political, economic and social causes. Simple, at first, in terms of structure and organization, they have become increasingly complex in order to cover the many aspects of international cooperation.

The appearance, and then the proliferation and diversification of international organizations, has been determined by three important factors (Miga-Beșteliu, R., 2000).

The first factor is the need to prevent war and rules regulating its course, especially since the discovery, at the end of the Second World War, of new weapons of mass destruction, which represented a risk for the globalization of military conflicts. Incidentally, preventing a new world war and peacekeeping were actually the primary aims of the establishment of the United Nations.

A second determinant factor takes into account the interdependencies that arise in the process of nations' development. These interdependencies require cooperation among states, in forms allowing free association, taking into account common interests and, where

possible, individual interests of the association's members. The industrial revolution and developments in science have diminished the distances among nations and intensified international contacts, whose coordination was achieved through international organizations, which, in turn, could facilitate cooperation between countries in various fields. The areas in which, after the Second World War, occur most interdependencies concern trade, monetary and financial relations, technology transfer and regional development.

A third factor, with a decisive influence in the evolution of international organizations in the last decades is connected to the combined effect of new problems faced by the international society, whose overall proportions require but a global treatment. These problems are: population growth, poverty and food, control of environmental damage, the fight against terrorism, the use of outer space. Although one cannot conclude that the international community's efforts to address these challenges have resulted in finding the most appropriate solutions, the combination of these efforts within international organizations cannot be ignored. International organizations fulfill this way a useful function in channeling part of the relations of interdependence between states and in ensuring

¹State Agrarian University of Moldova Faculty of Cadastre and Law, Moldavian Republic

adequate means to enhance cooperation between nations.

MATERIAL AND METHOD

Scientific investigations have focused broadly on the analysis of the literature in the field of international regulations and practice.

RESULTS AND CONSIDERATIONS

Currently, there is no universally accepted definition of international organization and the concept of international organization varies in relation to the interests of large groups of states and the philosophical conceptions of the authors. Doctrine generally outlines a constant background of specific elements, based on which we can characterize or even define this institution.

Static and dynamic examination of this institution, starting from the political, economic and social causes which were the basis of its founding, allows for the identification of defining features of international organizations.

Different views regarding the most important features of international organizations were expressed in legal literature. Thus, according to an opinion (Popescu D., Năstase A., 1997) the essential characteristics that define international organizations consist, essentially, of the following:

- their interstate nature, for the international organizations whose existence and activity are based on a multilateral treaty, which can have different names: charter, statute, constitution;
- permanent instruments for cooperation in performing the necessary activities to achieve the common objectives for which they were created;
- having their own bodies and international legal personality necessary to achieve the purposes for which they were established.

Another approach (Колосов Ю.М., Кузнецов В.И., 1999), lists as features of international organizations the following:

- states' association;
- the existence of a constitutive international treaty;
- permanent bodies;
- respecting the sovereignty of Member States.

Professor Raluca Miga-Beșteliu (Miga-Beșteliu, R., 2000) summarizes the characteristic features of international organizations in this manner:

- a. states participate to that particular association, as contracting parties, the international organizations being established by the states and acting through their will; usually states'

representation is made by the representatives of the governments of the respective states;

- b. the association of states in an international organization is achieved based on agreement of the states' will that materializes, usually, in a treaty, which goes by different names such as Charter (of UN, for example), Constitution (of the International Labor Organization), Statute (of the Council of Europe) etc.;

- c. states' association is undertaken to achieve some common objectives and goals: peacekeeping, economic cooperation, protection of human rights, trade development etc.;

- d. the international organization has, by the will of the states, its own institutional structure (Conference, Council of Administration, Secretariat, for example);

- e. states' association must take place within international law.

All these constituent elements, cumulatively met, "give international intergovernmental organizations their own legal personality - of national and international law - under which they enjoy rights and are bound by obligations in the territory of any Member State or in relationship with them or with other subjects of international law".

We believe that the opinion of Professor K. A. Bekiașev (Бекяшев К.А., 1999) is worthy of attention, according to which any international organization must have at least the following six features: establishment in accordance with international law; constitution based on an international treaty; achievement of cooperation in specific fields; the presence of an appropriate organizational structure; the presence of rights and obligations of the organization; the autonomy of international rights and obligations of the organization.

We believe that these features, but also some other not mentioned by this author and to which we will refer below, characterize a contemporary international organization:

1. It is a permanent form of states' cooperation, based on their association.

Any international organization is, primary, a permanent form of states' cooperation, based on their association as sovereign entities, as subjects of international law in view of achieving common goals. In this respect, most authors characterize international organization as an association of states. Associating as sovereign entities, states create international organizations as an institutional framework for the exercise of their rights and the fulfillment of their international obligations, thus participating, through common efforts, to solving problems, promoting relations of

peace, security and international cooperation. In this regard, the international organization is, by its main purpose, a center for harmonization and stimulation of Member States' efforts in solving issues of common interest.

2. It is created in accordance with international law. This feature has, in its essence, a decisive role. Any international organization must be established on a legal basis. In particular, the establishment of any organization must not infringe on the recognized interests of a state or of the international community in general. The constitutive act of the organization should correspond with the generally applicable principles and the norms of international law and, in the first place, to the *jus cogens* principles.

If the international organization was illegally constituted and its activity contravenes international law, the constitutive act of the organization is null and its action terminated. The international treaty or any of its provisions are invalid if, in their realization, was performed an action that is illegal under international law.

Normal cooperation among all states, regardless of their social and political system, involves as legal foundation the respect for the fundamental principles of international law and, above all, for the principle of sovereignty.

Therefore, for their activity to take place in accordance with international law, international organizations must guide their actions on the following main criteria:

- International organizations should not violate the sovereignty of Member States.
- The legal capacity the international organizations have, as derived subjects of international law, is dependent on the will of the states that created them and is limited by the provisions of the treaties by which they had been created. Some international organizations such as the European Union or the Council of Europe, can debate or pass resolutions on issues that are of the internal competence of the states. States have the right to equally participate in the international organizations' work and adoption of resolutions.
- The decisions and recommendations of international organizations are, generally, not legally binding. They become binding only if they are accepted by the Member States.

3. Its constitution is based on an international treaty (Тункин, Г.И., 2009). International governmental organizations are created based on a treaty between two or more states. This feature of international organizations is an essential one, which emphasizes from the start the fact that within international organizations there are sovereign states, with equal rights, that

consented freely to accede to the activity of those organizations, by an act of free will. This issue presents critical importance at political and legal level, since, based on these characteristics, clearly results that international organizations have a role of coordinator of the will and efforts of Member States (Miga-Besteliu R., 2006), and not a subordinator role.

A common element in all international organizations is that their establishment was agreed in one or more conferences attended by a number of states. Rules and norms relating to the goals and objectives of the organization, its members and its competence, the types and forms of activity, the manner of formation and functioning of the secretariat and the various bodies of the organization, the termination of activity, all these are established at the constituent conferences.

Any international organization is created by states through their will, which is expressed in a constituent act, in a Statute of the organization. The constituent act which may have different names (charter, constitution, convention etc.) has a dual nature: of multilateral treaty and of statute of the organization, with specific features and functions. It represents the basis of the creation and functioning of the organization, consisting of legal rules regarding its purposes and principles, its composition, structure, functions and powers. Its provisions apply to the relations between Member States within the organization, its relations with other organizations, with member or non-member states.

Member States establish, through the constituent act and other acts (special treaties, rules of procedure, resolutions) adopted based on this one, legal rules governing the organization and functioning of the organization in all aspects, such as: admission to the organization, participation of Member States in the composition and to the activity of principal and subsidiary bodies, working procedures for each body, voting procedure, the delineation of the attributions of the bodies within the general competence of the organization, states' representation, the legal status of their representatives and of international officials, financial resources etc.. All these legal norms constitute the law of international organizations, part of contemporary international law (Burian A., 2009).

International organizations can also be established based on the resolutions of other organizations with more general competence. Thus, based on the FAO Council's resolutions there were created the Indian Ocean Fisheries Commission and the Eastern Central Atlantic Ocean Fisheries Commission. In these cases, the

resolutions of UN Food and Agriculture Organization are not only simple acts of an international organization, but also specific forms of interstate agreements and, therefore, constituent acts of other international organizations. All international organizations created this way have an organizational structure specific to intergovernmental organizations.

4. International organizations intend achievement of cooperation in specific fields. International organizations are created to coordinate the efforts of states in various areas. International organizations unify the efforts of states in various fields: political (The Organization for Security and Co-operation in Europe), military (The North Atlantic Treaty Organization), technical-scientific (The European Organization for Nuclear Research), economic (The European Union), financial (The International Bank for Reconstruction and Development, The International Monetary Fund), social (The International Organization for Migration) and others. Thus, international organizations become intermediaries between Member States. Often states send to international organizations, for examination and solution, the most complex issues of international relations. International organizations assumed an important number of issues that, until their appearance, rested with the states, and were dealt with in direct, bilateral or multilateral relations (Тункин Г.И., 1970). However, any organization cannot claim an equal footing with states in all areas of international relations. Any competences of these organizations are derived from the rights of the states themselves. Along with other forms of international communication (multilateral consultations, conferences, meetings, seminars etc.), international organizations act as body of cooperation on specific issues of international relations.

5. International organizations have an appropriate organizational structure. This feature is an essential one for the existence of the international organization. It confirms the permanent nature of the organization and also distinguishes it from the different forms of international cooperation.

Unlike other legal forms of association of states, such as treaties and diplomatic conferences, an international organization has a permanent and institutional character, determined by the existence of permanent membership, structure, competences and functioning, established by a multilateral treaty with role of constituent act. All these elements give the activity of the organization an aspect of continuity, defining it as a permanent, organizational and legal framework of the cooperation of states.

The characteristic element of the formation and existence of an organization is its structure, the system of primary and auxiliary bodies, which through their merger, through their permanent or sessional operation, gives the organization its institutional character of permanence and continuity of coordinated activities of the Member States. This structure consists usually of three main categories of bodies: general representative bodies with general attributions, with sessional activity and often having the role of supreme forum (General meeting, Conference etc.); primary bodies with limited competence (the Council, the Committee etc.); secretarial bodies with permanent activity, composed of international civil servants, with technical and executive attributions. This structure is customized by each international organization, according to its functions and the will of Member States. In addition to these, there is also the permanent membership of the organization, established by regulations of membership to the organization in the constituent act, with reference to admission to (and suspension or exclusion from) the organization and to the rights and obligations of each Member State (Burian A., 2009).

6. The presence of the rights and obligations of the organization. Previously we have mentioned that the rights and obligations of the organization derive from the rights and obligations of the Member States. It is up to the members for the organization to possess this particular complex of rights and obligations (МАЛИНИН С.А., 2006). No organization can undertake certain actions affecting the interests of its members, without the consent of the States Parties. The rights and obligations of any organization are generally established in the constituent act, in resolutions of the supreme executive bodies, in agreements between organizations. These documents set out the intentions of the Member States, which are to be implemented subsequently by the relevant international organization. States are entitled to prohibit the organization to take certain actions and the organization cannot exceed its competences. For example, art. (5 "C") of the IAEA Statute prohibits the Agency to guide its actions of providing help to its members, based on political, economic, military etc. grounds, which are incompatible with its Statute.

7. The autonomy of international rights and obligations of the organization refers to the possession of an autonomous will of the international organization distinct from the will of States Parties (БЕКЯШЕВ К.А., 1999). This feature means that, within the limits of its competence, any organization is entitled to choose the means and ways to fulfill the rights and

obligations entrusted to it by the Member States. Member States are not interested how the organization performs the actions it was entrusted with or its statutory obligations in general. The organization itself, as a subject of international public and private law, is entitled to choose the most rational means and methods of activity. In this case, Member States shall establish control over the legitimacy of the manner of use of the autonomous will of the organization.

We conclude by emphasizing that the international organization is a distinct reality and a participant, characterized by functional autonomy, to international relations, as it was created as a permanent association of the states, having a system of collective bodies with independent competence and permanent functions. This functional autonomy, being determined in content, scope and exercise by the agreement of wills of the states, may constitute a "legal will" of the organization, distinct from the wills of the Member States, provided its respect for the legality of operation, for the goals and objectives established in its constituent act.

When establishing an international organization, the Member States give it, through the constituent act and other documents, necessary attributes and powers to fulfill its functions: diplomatic privileges and immunities, the right of representation, the right to enter into agreements, to adopt decisions etc.. All these give legal expression to the functional autonomy of the organization in its relations with other organizations or with the states and define also its quality of subject of international law and its international legal personality.

8. Finally, a last feature, that was introduced by Professor N. Osmochescu (Burian, 2009) and which we support, is that international organizations and their officials enjoy privileges and immunities on the territory of the Member States.

CONCLUSIONS

In conclusion, we wish to reiterate that the appearance and then proliferation of international organizations was influenced by various factor of different nature: political, social, economic, human - yet, the most essential of them, in our opinion, were the three basic factors, which we have mentioned in this paper.

Regarding the fundamental features that can characterize a contemporary international organization, they are, in our opinion, the eight basic categories examined and substantiated in this paper, features that are identical in some cases with the features of the legal personality of the international organization, but not in all cases.

REFERENCES

- Burian, A., 2009** - *International Public Law*, 3rd edition, Chişinău, p. 260.
- Miga-Besteliu, R., 2000** - *Intergovernmental International Organizations*, Legal Studies – Bucharest, ALL BECK Publishing House, p. 27.
- Miga-Besteliu, R., 2006** - *Intergovernmental International Organizations*, Bucharest, ALL BECK Publishing House, p. 45.
- Popescu, D., Nastase, A., 1997** - *Public International Law*, „Şansa” Publishing House, Bucharest, p.255.
- Бекяшев, К.А., 1999** - *Международное публичное право: Учебник*, Москва: Изд. Проспект, стр. 240.
- Колосов, Ю.М., Кузнецов, В.И., 1999** - *Международное право: Учебник*, Москва, Изд. Международные отношения, стр.172.
- Малинин, С.А., 1971** - *Мирное использование атомной энергии: международно-правовые вопросы*. Москва: Издательство «Международные отношения», стр. 116.
- Тункин, Г.И., 1970** - *Теория международного права*, Москва:Изд. Международные отношения, , стр. 343.
- Тункин, Г.И., 2009** - *Теория международного права*, Москва: Изд. „Зерцало”, Серия «Русское юридическое наследие», p.304.